

M e m o r a n d u m

To : Chairman Keese
Commissioner Laurie
Commissioner Pernell

Date : March 22, 2000
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From : California Energy Commission — **Michal C. Moore**
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Subject : Dissenting Opinion on the ***Report On Improvements To The Energy Commission's Energy Facility Siting Process***

I am reaffirming my dissenting opinion (attached) regarding the *Report on Improvements to the Energy Commission's Energy Facility Siting Process*. My principal reason for dissenting is my belief that the report focuses on a single element - the permitting, to the exclusion of the siting process. My chief objection is that because of the report's more narrow focus it overlooks substantive "big picture" issues.

Before discussing the big-picture issues, however, I want to make it clear that my dissent should not be construed as anti-generation. It is quite the opposite. My dissent is a call for systemic improvements in the siting process that results in licensing generating facilities that can and will be built.

Critically missing among these big-picture issues are the planning and policy development components of the siting process, and a corresponding evaluation of regional reliability issues (for instance, how to ensure timely licensing in these geographic areas) and system-wide or region-wide impacts associated with developing new generation. These are among the deficiencies I am referring to when I say that our current *siting* process is fatally flawed.

I acknowledge that the report attempts to address issues beyond permitting, but, unfortunately, they generally take the form of attempts to expand our authority. In the end, these attempts may do nothing more than open old wounds with outside parties and generate hostility, all the while gaining us nothing in terms of improving the overall process.

We must take a hard look at this report and ask ourselves just what we are trying to accomplish. SB 110 provides us with the opportunity to improve or change our siting process, and we do not want to waste it. We need a comprehensive report that addresses the entire siting process. Unless we re-invent the planning and policy components which the Electricity Report (ER) once provided, we will be handing our detractors a report that supports arguments for the return of lead-agency authority for power plants to local government and ultimately our dissolution as a Commission.

In order to retain our unique, statewide-siting authority (and associated override authority), we need to clearly articulate how our process differs from that of local government and, more importantly, why that matters. I believe few people understand that added value. (The exception may be the developer's lawyers, but only because they are so well served by a certified regulatory process that allows them to corner a niche market.)

In addition, while SB 110 specifically references California's electricity reliability concerns, we do not discuss what these mean to us in the report. As a result, we do not even begin to discuss a siting process that distinguishes between proposed projects in areas of known concern such as San Diego and San Francisco and the Kern County oil fields.

Timely licensing means one thing in San Diego and San Francisco, and another thing just about everywhere else in California. This was the case before AB 1890, and it is still the case today. Nothing in the current or proposed process does more than passively address this issue. The Energy Commission needs to marshal its collective efforts to resolve these electricity-supply issues. Working to resolve issues of inadequate local generation are completely different from facilitating any and all generation development throughout our state.

In this regard, it is important to note a March 14, 2000 Memo from the ISO Board to the Grid Reliability/Operations and Market Issues/ADR Committee calling for immediate action in these two geographic areas which the Board describes as "reliability challenged." One of the options the Board is proposing is an RFP process offering the winners locational payments. We need a planning process that informs and integrates issues like these and puts us in a position to make sound decisions when reviewing "needed" projects in these regions.

Until these issues are addressed, however, I must continue to disagree with the report's conclusion that the process is fundamentally sound. For instance, the report does not address the outstanding issues related to the dissolution of the ER/NOI/AFC process. Without addressing the planning and policy void left by other aspects of SB 110, we cannot consider the process sound.

Given these fundamental concerns, I recommend that we forward the Committee's report to the legislature on March 31, 2000 as a Staff report. As a Staff report, it would provide useful information regarding the permitting component of the siting process. However, a Commission-approved report must also address the planning and policy components of the siting process. These are issues that are beyond the scope of Staff's expertise and are the responsibility of all the Commissioners.

I recommend that the report acknowledge the reality that the process, to date, resulted in the identification and resolution of many permitting issues. Moreover, the process to

date, including matters raised in my dissent, has resulted in the identification of many planning and policy issues that demand additional investigation. In the staff report, I recommend we describe a 90-day process to address these issues. This process would include En Banc hearings and the opportunity for all Commissioners to collectively grapple with the issues that are our planning and policy responsibilities.

At the end of this process we would provide the legislature with a supplemental document. In this way, we can partially meet our immediate legislative mandate and conduct further review of the planning and policy issues associated with our siting process.

MICHAL C. MOORE
Commissioner